

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

Keith Fisher,

Civil No. 06-1439 (PAM/AJB)

Petitioner,

v.

**ORDER**

R.L. Morrison,

Respondent.

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This matter is before the Court on Petitioner's Objections to the Report and Recommendation ("R&R") of Magistrate Judge Arthur J. Boylan dated May 18, 2006. The R&R recommended that the Petition for Writ of Habeas Corpus brought pursuant to 28 U.S.C. § 2241 be granted to the extent Petitioner requests a community corrections center ("CCC") eligibility determination without regard to 28 C.F.R. §§ 570.20 and 570.21. The R&R recommended that the Petition be denied to the extent Petitioner seeks immediate transfer to a CCC or immediate determination of his CCC eligibility date. Petitioner objects to the R&R's partial denial and seeks an immediate evaluation and transfer to a CCC.

Petitioner's objection is overruled. While the Bureau of Prisons ("BOP") must make an individualized determination of Petitioner's eligibility, neither Fults v. Sanders, 442 F.3d 1088 (8th Cir. 2006),<sup>1</sup> nor any other authority requires the BOP to conduct an eligibility review or immediately transfer a prisoner to a CCC on demand by the prisoner. The BOP will

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<sup>1</sup>In Fults, the Eighth Circuit held that 28 C.F.R. §§ 570.20 and 570.21 were invalid because they conflicted with 18 U.S.C. § 3621(b), which gives broad discretion to the Bureau of Prisons to determine the location of an inmate's imprisonment. Id. at 1091-92.

determine Petitioner's eligibility for CCC placement in accordance with Program Statement 7310.04, which does not contain the procedures Petitioner challenges in this action. Consistent with that Program Statement, the BOP will evaluate Petitioner's eligibility eleven to thirteen months before his projected release date.

Accordingly, **IT IS HEREBY ORDERED** that:

1. The Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241 (Docket No. 1) is **GRANTED** to the extent Petitioner requests a CCC eligibility determination without regard to 28 C.F.R. §§ 570.20 and 570.21, but **DENIED** to the extent Petitioner seeks immediate transfer to a CCC or an immediate determination of his CCC eligibility date;
2. The Report and Recommendation of Magistrate Judge Arthur J. Boylan (Docket No. 8) is **ADOPTED**; and
3. Petitioner's Objection to the R&R (Docket No. 11) is **OVERRULED**.

**LET JUDGMENT BE ENTERED ACCORDINGLY.**

Dated: June 20, 2006

s/ Paul A. Magnuson  
Paul A. Magnuson  
United States District Judge